SINJO CREDIT & LEASING SDN. BHD.

v.

MINISTER OF FINANCE MALAYSIA

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[ORIGINATING MOTION NO. 32-16 OF 1986]
11 OCTOBER 1986

ADMINISTRATIVE LAW: *Application for leave to apply for an order of certiorari - Whether decision of Minister an administrative act not subject to judicial review.*

This was application for leave to apply for an order of *certiorari* to quash the order made by the Minster of Finance dated 28 July 1985 when the applicant's appeal under s. 129 of the Customs Act 1967 for the return of the applicant's motor vehicle JBB 2833 (which had been apprehended in a Customs offence) was rejected by the respondent.

Section 127 of the Customs Act 1967 reads: "An order for the forfeiture ... of anything liable to forfeiture under this Act shall be made by the Court ... if it is proved to the satisfaction of the Court that an offence against this Act ... has been committed and that the goods ... were used in the commission of the offence notwithstanding that no person may have been convicted of such offence."

The Federal Counsel in opposing the application contended that the decision of the Minister was an administrative act and therefore not subject to judicial review.

Held:

[1] The distinction between judicial and administrative activities was swept away by the decision of the House of Lords in *Ridge v. Baldwin* and judicial review now lies against any person or body of persons charged with any public duty. However, leave is not granted in such applications as a matter of course.

[2] Credible grounds must be advanced to show that there is a case to argue. The mere fact that the owner of a vehicle was innocent of the offence for the commission of which the vehicle was used, does not entitle him as a matter of right to have an order from the Minister for the return of the vehicle to him.

[3] Apart from making the down-payment, it appears from the notes of evidence of the inquiry, which the Minster had before him, that the hirer was thoroughly unreliable. The inference is open that the hire purchase company did not take adequate steps to investigate the *bona fides* of the person to whom they were providing the car. The act of smuggling in this case was wanton and deliberate. Where the evidence is that the offence was committed and that the car was used in the commission of the offence, as in this case, the forfeiture order is mandatory.

[4] The materials before the learned Judge do not suggest that the Minister acted improperly in any way.

[Application dismissed with costs.]

Cases referred to:
Ridge v. Baldwin [1964] AC 40
Soong Chee Kong v. PP [1951] 17 MLJ 5
Reg. v. Ng Hee Weng & Ors. [1956] 22 MLJ 85

PP v. Wong Kong Yoong [1964] 30 MLJ 63
Ting Seh Hing v. PP [1985] 1 MLJ 463
Padfield v. Minister of Agriculture [1968] 1 All ER 694

Legislation referred to:
Customs Act 1967, ss. 129, 127

Other sources referred to:
Customs offences, Dr. Andrew Chew Peng Hui, 1st Edn., p. 254

For the applicant - T. Balaskanda; M/s. Zaman & Associates
For the respondent - Sallehudin, FC

JUDGMENT

Mahadev Shankar J:

This is an application for leave to apply for an order of *certiorari* to remove into this Court for the purpose of its being quashed, the order made by the Minister of Finance dated 28 July 1985 when the applicant's appeal under s. 129 of the Customs Act 1967 for the return of the applicant's motor vehicle JBB 2833 was rejected by the respondent.

The applicant is in the business of selling cars on hire purchase. On 6 May 1985 it entered into a hire purchase agreement with one Nasrul bin Machmuddin with respect to car No. JBB 2833 ('the car').

The hire purchase agreement provided for a deposit to be paid of RM2,700 and 24 monthly instalments thereafter of RM350 each.

On 13 May 1985, acting on information received, some customs officers apprehended this car at Pontian. The driver of the car escaped. When the car was searched, it was found to contain contraband in the form of a substantial quantity of textiles on which duty had not been paid.

On 7 May 1986 an enquiry was held in the Magistrate's Court, Johor Bahru. The customs officers concerned gave evidence. The contraband articles were produced. There was overwhelming evidence that the car had been used in the commission of a customs offence.

The applicant company participated in the inquiry. A clerk of theirs gave evidence that shortly after the hire purchase agreement was signed, the cheque issued by the Hirer had bounced, and their attempts to locate him or the car were abortive. Subsequently they came to know that the car had been impounded by the customs.

The hirer himself did not appear at the inquiry.

In these circumstances the learned Magistrate made the only order he could under s. 127 of the Customs Act 1967 which reads in material particular:

> An order for the forfeiture ... of anything liable to forfeiture under this Act shall be made by the Court ... if it is proved to the satisfaction of the Court that an offence against this Act ... has been committed and that the goods ... were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

On 16 May 1986 the applicant through its solicitors appealed to the Minster of Finance ('the Minister') for the release of the car to them. They attached a copy of the notes of the inquiry to their appeal. They claimed that the forfeiture would result in a loss of RM10,000 to the applicant. They submitted that the hirer had run away, that his whereabouts were unknown, and that it would not therefore be possible for the applicant to recover their loss

from the hirer. Further more they urged that the Court had not found that the applicant was in any way involved in the commission of the offence apart from being the owners of the car in question. By a letter dated 28 July 1986, the Minister through his relevant officer referred to the solicitor's letter and stated that the Minister did not agree to return the car to the applicant. In other words, the appeal was rejected.

So this application was filed.

The only ground urged by Federal Counsel in opposing the application, was that the decision of the Minister was an administrative act and therefore not subject to judicial review. With respect, the distinction between judicial and administrative activities was swept away by the decision of the House of Lords in *Ridge v. Baldwin* [1964] AC 40 and I would agree that judicial review now lies against any person or body of persons charged with any public duty.

However contrary to what has been urged by the applicant, I do not agree that leave should be automatically granted in all cases.

The application was supported by an affidavit of the managing director of the applicant, one Mr. Tan Toh Um ('Mr. Tan').

This Mr. Tan says that he believes that the Minister rejected the appeal solely because the applicant was a car finance and credit company and that it was the Minister's policy to reject all appeals from finance and other car credit companies. The sources and the materials for this belief were not disclosed, and in their absence, I am compelled to infer that this allegation is baseless.

The other grounds urged and the Courts' response to them are as follows:

(1) That the Minister had acted contrary to the rules of natural justice. As against this the applicant through his solicitor had the fullest opportunity of presenting their case, and they did so by the letter aforesaid to which they attached the notes of evidence of the inquiry.

(2) That the Minister had acted in excess of his jurisdiction. In the face of s. 129 of the Act, such a suggestion is misconceived.

(3) That the Minister erred in law and that there are errors in law "on the fact of the record" (*sic*) in that the Minister's finding was contrary to the finding of the Court that the applicants were an innocent party. But the "record" in this case was the Minister's letter of the rejection of the appeal. There was no error of law on the face of that document.

Four other grounds have been urged, which are all a repetition of the same ground i.e. that there were errors of law and fact on the record, that the rules of natural justice had not been obeyed, that the Minster had acted not upon a consideration of the facts of the case but blindly in pursuance of a policy to reject all appeals from finance companies, and that he had given no reason for the rejection of the appeal.

This is not the first time that such a problem has arisen in our Courts. See *Customs Offences* - 1st Edn. by Dr. Andrew Chew Peng Hui at p. 254 where he refers to *Soong Chee Kong v. PP* [1951] 17 MLJ p. 5, *Reg. v. Ng Hee Weng & Ors.* [1956] 22 MLJ 85, *PP v. Wong Kong Yoong* [1964] 30 MLJ 63. *Ting Seh Hing v. PP* [1985] 1 MLJ p. 463 is another recent case.

Leave is not granted in such applications as a matter of course. Credible grounds must be advanced to show that there is a case to argue. The mere fact that the owner of a vehicle was innocent of the offence for the commission of which the vehicle was used, does not entitle him as a matter of right to have an order from the Minster for the return of his vehicle to him.

Some days after the Court rose, the applicant submitted a further list of authorities by which time my judgment had already been prepared. For the sake of completion, these authorities have been listed hereunder. They have not caused any change in my thinking. One of the cases, *Padfield v. Minster of Agriculture* [1968] 1 All ER p. 694 was nevertheless of some interest. It was there held that although the English Minister of Agriculture had an unfettered discretion under the Agricultural Marketing Act 1958, he was bound to exercise it lawfully, viz., not to misdirect himself in law, nor to take into account irrelevant matters, nor to omit relevant matters from consideration. But in that case, the Minister gave his reasons, and they were wrong reasons. Furthermore, the complaint in that case was a substantial and genuine complaint. It was not frivolous, repetitive or vexatious.

The Court there held that the fact that a Minster gave no reasons for his decision, whether or not to exercise a discretionary power conferred on him by statute, would not prevent the Court from reaching a conclusion in a proper case that a prerogative order should issue.

At the risk of repetition, let me say once again that I do not consider this case a proper one for judicial intervention. Mere innocent ownership, in the view of this Court, is only one of the factors that goes into the equation. Standing alone, it should never be enough. Apart from making the down-payment, it appears from the notes of evidence of the inquiry, which the Minister had before him, that the hirer was thoroughly unreliable. The inference is open that the hire purchase company did not take adequate steps to investigate the *bona fides* of the person to whom they were providing the car. At the enquiry, the hirer was not called. There was no evidence from which it could be positively concluded that he was the one who was driving the car at the time the offence was committed. But then there was no evidence that he had not provided the car for the use to which it was put. The act of smuggling in this case was wanton and deliberate. On the material available, if this Court had to decide the matter, I would have upheld the order of forfeiture.

But it cannot be more strongly emphasised, that the deciding authority in this case is the Minister and not the Court, and the section does not impose upon him any duty to give reasons for his decision. He must of course consider all the material placed before him and decide in good faith. Where the evidence is that the offence was committed and that the car was used in the commission of the offence, as in this case, the forfeiture order is mandatory. That fact should speak for itself. The Minister is not a Court of Appeal. The materials before me do not suggest that he acted improperly in any way.

This application is therefore dismissed with costs.

Also found at [1987] 2 CLJ 263